IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

Crl.MC.No. 1090 of 2007

PETITIONER:

SUO MOTU PROCEEDINGS INITIATED

BY ADV. SUO MOTU

RESPONDENTS:

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1. K.S.THOMACHAN,
DY.S.P. C.B.C.I.D. SIG-II, EKM

2. STATE OF KERALA, REP BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA

BY DGP. SRI.P.G.THAMPI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/04/2007, ALONG WITH BA NO. 1753 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

Crl.M.C.No. 1090/2007

Dated this 9th day of April, 2007

O R D E R

These proceedings were initiated suo motu by this Court against Sri. K.S.Thomachan, Dy.S.P., C.B.C.I.D, SIG-II, Ernakulam, for the non compliance of the order dated 23.3.2007 in B.A.1753/2007. B.A.1753/2007 was an application for anticipatory bail filed by the first accused in Crime No.1180/2006 of Central Police Station, Ernakulam, registered for offences punishable under Section 120B, 406 and 420 IPC. The case of the prosecution was that the petitioner therein had caused heavy loss to the Kerala Civil Supplies Corporation due to the non-replacement of medicines.

2. Even though this Court was not inclined to grant anticipatory bail to the first accused, this Court however directed the first accused to surrender before the Investigating Officer on any day between 28.3.2007 and 30.3.2007 for the purpose of interrogation and recovery of incriminating materials, if any. The first accused was, thereafter, directed to be produced before

the Magistrate having jurisdiction on the same day and the Magistrate was directed to release the first accused on bail on appropriate conditions. Accordingly the first accused surrendered before the Investigating Officer, namely Sri. K.S.Thomachan, Dy.S.P. C.B.C.I.D, SIG-II, Ernakulam, on 28.3.2007. Instead of interrogating the first accused, what the first respondent, Sri.K.S.Thomachan, did was to serve the first accused with a notice directing him to appear for the purpose of interrogation as and when required by the Investigating Officer. Since the first accused was not interrogated by the first respondent herein, he could not obviously move the Magistrate for regular bail.

3. The first accused, thereafter, filed Crl.M.A.1748/2007 seeking permission to surrender before the Magistrate and apply for regular bail. It was at this juncture that this Court initiated suo motu proceedings against the first respondent, Sr.K.S.Thomachan. After entering appearance through the learned Director General of Prosecution

Sri.P.G.Thampi, he has filed a statement wherein it is stated that as he was due for retirement from service on 31.3.2007, he had transferred the C.D files to Sri.Sasikumar, Dy.S.P. Of police and that was the reason why he happened to issue a notice to the first accused to appear and make himself available for interrogation. Even though in the statement the first respondent would say that there was no latches, negligence or dereliction of duty on his part in not complying the directions of this Court, that is a stand which cannot be accepted. When the direction was to interrogate the first accused and then produce him before the Magistrate, who in turn was directed to release the first accused on bail, without interrogating the first accused, the first respondent herein cannot claim that he had complied with the orders of this Court.

4. However, taking the submissions of Sri.P.G.Thampi in all its earnestness, I accept the contention of the first respondent that it was all done on the eve of his retirement without any intention to

willfully disobey the directions of this Court. Under these circumstances, I accept the apology tendered by Sri.K.S.Thomachan, the first respondent, and close the matter.

V.RAMKUMAR,
JUDGE

mrcs

V.RAMKUMAR, J.

Crl.M.A.1748/2007 in B.A..No. 1753/2007

Dated this 9th day of April, 2007

O R D E R

It is admitted by both sides that though not within the initial period stipulated by this Court, the petitioner has been interrogated by the Investigating Officer. If so, in view of the Order dated 23.3.2007 in B.A.1753/2007, the petitioner is entitled to be released on bail. Accordingly, the petitioner, who is the first accused in Crime No.1180/2006 of Central Police Station, Ernakulam, and re-registered as Crime

No.39/CR/07/SIG-II/CBCID/EKM, shall be at liberty to move the Chief Judicial Magistrate, Ernakulam, for regular bail. As and when an application for regular bail is filed by the petitioner, the Chief Judicial Magistrate shall release the petitioner on bail on appropriate conditions including one ensuring that he will not commit any offence while on bail and that he will make himself available for interrogation, as and when required by the police.

V.RAMKUMAR,
JUDGE

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